

**Chapter 173-806 WAC
MODEL ORDINANCE**

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WAC

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[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-055, filed 6/15/84. Formerly WAC 173-805-040.] Repealed by 98-23-038 (Order 95-16 Phase 2), filed 11/10/98, effective 12/11/98. Statutory Authority: RCW 43.21C.130.

**PART ONE
AUTHORITY**

WAC 173-806-010 Authority. The city/county of adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This ordinance contains this city's/county's SEPA procedures and policies.

The SEPA rules, chapter 197-11 WAC, must be used in conjunction with this ordinance.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-010, filed 6/15/84.
Formerly WAC 173-805-010.]

PART TWO GENERAL REQUIREMENTS

WAC 173-806-020 Purpose of this part and adoption by reference. This part contains the basic requirements that apply to the SEPA process. The city/county adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

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|------------|---|
| WAC | |
| 197-11-040 | Definitions. |
| 197-11-050 | Lead agency. |
| 197-11-060 | Content of environmental review. |
| 197-11-070 | Limitations on actions during SEPA process. |
| 197-11-080 | Incomplete or unavailable information. |
| 197-11-090 | Supporting documents. |
| 197-11-100 | Information required of applicants. |
| 197-11-158 | GMA project review--Reliance on existing plans, laws, and regulations. |
| 197-11-210 | SEPA/GMA integration. (WAC 197-11-210 through 197-11-235 optional; does not apply for non-GMA jurisdictions.) |
| 197-11-220 | SEPA/GMA definitions. |
| 197-11-228 | Overall SEPA/GMA integration procedures. |
| 197-11-230 | Timing of an integrated GMA/SEPA process. |
| 197-11-232 | SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping. |
| 197-11-235 | Documents. |
| 197-11-238 | Monitoring. (optional) |
| 197-11-250 | SEPA/Model Toxics Control Act integration. |

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| 197-11-253 | SEPA lead agency for MTCA actions. |
| 197-11-256 | Preliminary evaluation. |
| 197-11-259 | Determination of nonsignificance for MTCA remedial actions. |
| 197-11-262 | Determination of significance and EIS for MTCA remedial actions. |
| 197-11-265 | Early scoping for MTCA remedial actions. |
| 197-11-268 | MTCA interim actions. |

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-020, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-020, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-030 Additional definitions. In addition to those definitions contained within WAC 197-11-700 through 197-11-799 and 197-11-220, when used in this ordinance, the following terms shall have the following meanings, unless the context indicates otherwise:

(1) "Department" means any division, subdivision or organizational unit of the city/county established by ordinance, rule, or order.

(2) "SEPA rules" means chapter 197-11 WAC adopted by the department of ecology.

(3) "Ordinance" means the ordinance, resolution, or other procedure used by the city/county to adopt regulatory requirements.

(4) "Early notice" means the city's/county's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (DNS) procedures).

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-030, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-030, filed 6/15/84. Formerly WAC 173-805-030.]

WAC 173-806-040 Designation of responsible official. (1) *(Note: Use Option 1 or 2, but not both.) (Option 1)* For those proposals for which the city/county is the lead agency, the responsible official shall be *(Note: Indicate position title, level within city's/county's organization, elected official title or legislative body)*

(Option 2) For public proposals, the head (administrative official) of the department making the proposal shall be the responsible official. For private proposals, the head (administrative official) of the department with primary responsibility for approving the permits and licenses for the proposal shall be the responsible official. When multiple officials have permitting authority, the assignment of responsibility shall be reached by agreement.

(2) For all proposals for which the city/county is the lead agency, the responsible official shall

make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020.

(3) The city/county shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.17 RCW.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-040, filed 6/15/84. Formerly WAC 173-805-115.]

WAC 173-806-050 Lead agency determination and responsibilities. (1) The department within the city/county receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.

(2) When the city/county is the lead agency for a proposal, the department receiving the application shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(3) When the city/county is not the lead agency for a proposal, all departments of the city/county shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city/county department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city/county may conduct supplemental environmental review under WAC 197-11-600.

(4) If the city/county or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city/county must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the city/county may be initiated by

(5) Departments of the city/county are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944: *Provided*, That the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

(6) Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (That is: Which agencies require nonexempt licenses?).

(7) When the city/county is lead agency for a MTCA remedial action, the department of ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the city/county shall decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-050, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-050, filed 6/15/84. Formerly WAC 173-805-070.]

WAC 173-806-053 Transfer of lead agency status to a state agency. *(Optional for cities or towns under 5,000 population and counties with a population under eighteen thousand.)* For any proposal for a private project where the city/county would be the lead agency and for which one or more state agencies have jurisdiction, the city's/county's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the city/county shall be an agency with jurisdiction. To transfer lead agency duties, the city's/county's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city/county shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-053, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-053, filed 6/15/84. Formerly WAC 173-805-053.]

WAC 173-806-058 Additional timing considerations. (1) For nonexempt proposals, the DNS or *(Note: Select either draft or final EIS.)* EIS for the proposal shall accompany the city's/county's staff recommendation to any appropriate advisory body, such as the planning commission.

(2) *(This subsection may be used by non-GMA jurisdictions, and by GMA jurisdictions for permits not subject to the notice of application requirements of RCW 36.70B.110.)* If the city's/county's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city/county conduct environmental review prior to submission of the detailed plans and specifications. *(Note: The following may be added.)* The point at which environmental review may be initiated for specific permits or other licenses requiring detailed project plans and specifications is

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-058, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-058, filed 6/15/84. Formerly chapter 173-805 WAC.]

PART THREE CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

WAC 173-806-065 Purpose of this part and adoption by reference. This part contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The city/county adopts the following

sections by reference, as supplemented in this part:

WAC

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|------------|---|
| 197-11-300 | Purpose of this part. |
| 197-11-305 | Categorical exemptions. |
| 197-11-310 | Threshold determination required. |
| 197-11-315 | Environmental checklist. |
| 197-11-330 | Threshold determination process. |
| 197-11-335 | Additional information. |
| 197-11-340 | Determination of nonsignificance (DNS). |
| 197-11-350 | Mitigated DNS. |
| 197-11-355 | Optional DNS process. |
| 197-11-360 | Determination of significance (DS)/initiation of scoping. |
| 197-11-390 | Effect of threshold determination. |

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-065, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-065, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-070 Flexible thresholds for categorical exemptions. *(Note: This section is optional. The lowest exempt level in the ranges below apply unless the city/county raises the level based on local conditions, such as previous DNSs on the activities or city/county development codes. The city/county may raise the level for an exemption to any point up to the maximum specified in WAC 197-11-800 (1)(c); once levels are established in this ordinance, the city/county must apply a level to all projects within the geographic area to which the level applies.)*

(1) city/county establishes the following exempt levels for minor new construction under WAC 197-11-800 (1)(b) based on local conditions:

(a) For residential dwelling units in WAC 197-11-800 (1)(b)(i) *(Note: Range 4 - 20 units):*
Up to dwelling units.

(b) For agricultural structures in WAC 197-11-800 (1)(b)(ii) (*Note: Range 10,000 - 30,000 square feet*): Up to square feet.

(c) For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800 (1)(b)(iii) (*Note: Range 4,000 - 12,000 square feet and 20 - 40 parking spaces*): Up to square feet and up to parking spaces.

(d) For parking lots in WAC 197-11-800 (1)(b)(iv) (*Note: Range 20 - 40 parking spaces*): Up to parking spaces.

(e) For landfills and excavations in WAC 197-11-800 (1)(b)(v) (*Note: Range 100 - 500 cubic yards*): Up to cubic yards.

(2) Whenever the city/county establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504 under WAC 197-11-800 (1)(c).

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-070, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-080 Use of exemptions. (1) Each department within the city/county that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this ordinance apply to the proposal. The city/county shall not require completion of an environmental checklist for an exempt proposal.

(2) In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the city/county may authorize exempt actions prior to compliance with the procedural requirements of this ordinance, except that:

(a) The city/county shall not give authorization for:

(i) Any nonexempt action;

(ii) Any action that would have an adverse environmental impact; or

(iii) Any action that would limit the choice of alternatives.

(b) A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(c) A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-080, filed 6/15/84. Formerly WAC 173-805-060.]

WAC 173-806-090 Environmental checklist. (1) (*Use Option 1 or 2, but not both*) (*Option 1, using checklist from the rules without changes.*) Except as provided in subsection (4) of this section,

a (this exception is added for jurisdictions wishing to use planned actions) completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this ordinance; except, a checklist is not needed if the city/county and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city/county shall use the environmental checklist to determine the lead agency and, if the city/county is the lead agency, for determining the responsible official and for making the threshold determination.

(Option 2, adding questions to the checklist.) A completed environmental checklist shall be filed at the same time as an application for a permit, license, certificate, or other approval not exempted in this ordinance; except, a checklist is not needed if the city/county and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. Except as provided in subsection (4) of this section, the checklist shall be in the form of WAC 197-11-960 with the following additions: *(Indicate city's/county's additions.)*.

(2) For private proposals, the city/county will require the applicant to complete the environmental checklist, providing assistance as necessary. For city/county proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

(3) *(Optional.)* The city/county may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs: *(Either one or both of the following may be included.)*

(a) The city/county has technical information on a question or questions that is unavailable to the private applicant; or

(b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

(4) *(This subsection is to be used only by jurisdictions wishing to use planned actions.)* For projects submitted as planned actions under WAC 197-11-164, the city/county shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the department of ecology to allow at least a thirty-day review prior to use.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-090, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-090, filed 6/15/84. Formerly WAC 173-805-090.]

WAC 173-806-100 Mitigated DNS. (1) As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(2) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

(a) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

(b) Precede the city's/county's actual threshold determination for the proposal.

(3) The responsible official should respond to the request for early notice

within. working days. The response shall:

- (a) Be written;
- (b) State whether the city/county currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city/county to consider a DS; and
- (c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- (4) As much as possible, the city/county should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- (5) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city/county shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal:
 - (a) If the city/county indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city/county shall issue and circulate a DNS under WAC 197-11-340(2).
 - (b) If the city/county indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city/county shall make the threshold determination, issuing a DNS or DS as appropriate.
 - (c) The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate.
 - (d) Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- (6) (*Note: GMA counties/cities may use either Option 1 or 2; non-GMA counties/cities must use Option 1.*) (*Option 1*) A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice. (*Option 2*) A mitigated DNS is issued under either WAC 197-11-340(2), requiring a fourteen-day comment period and public notice, or WAC 197-11-355, which may require no additional comment period beyond the comment period on the notice of application.
- (7) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city/county.
- (8) If the city's/county's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city/county should evaluate the threshold determination to assure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).
- (9) The city's/county's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city/county to consider the clarifications or changes in its threshold determination.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-100, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-100, filed 6/15/84. Formerly chapter 173-805 WAC.]

PART FOUR
ENVIRONMENTAL IMPACT STATEMENT
(EIS)

WAC 173-806-110 Purpose of this part and adoption by reference. This part contains the rules for preparing environmental impact statements. The city/county adopts the following sections by reference, as supplemented by this part:

WAC

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| 197-11-400 | Purpose of EIS. |
| 197-11-402 | General requirements. |
| 197-11-405 | EIS types. |
| 197-11-406 | EIS timing. |
| 197-11-408 | Scoping. |
| 197-11-410 | Expanded scoping. (Optional) |
| 197-11-420 | EIS preparation. |
| 197-11-425 | Style and size. |
| 197-11-430 | Format. |
| 197-11-435 | Cover letter or memo. |
| 197-11-440 | EIS contents. |
| 197-11-442 | Contents of EIS on nonproject proposals. |
| 197-11-443 | EIS contents when prior nonproject EIS. |
| 197-11-444 | Elements of the environment. |
| 197-11-448 | Relationship of EIS to other considerations. |
| 197-11-450 | Cost-benefit analysis. |
| 197-11-455 | Issuance of DEIS. |
| 197-11-460 | Issuance of FEIS. |

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-110, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-120 Preparation of EIS--Additional considerations. (1) Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of (*department*) under the direction of the responsible official. Before the city/county issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and chapter 197-11 WAC.

(2) The DEIS and FEIS or draft and final SEIS shall be prepared by city/county staff, the applicant, or by a consultant selected by the city/county or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the city/county will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's/county's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(3) The city/county may require an applicant to provide information the city/county does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this ordinance or that is being requested from another agency. (This does not

apply to information the city/county may request under another ordinance or statute.)

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-120, filed 6/15/84. Formerly WAC 173-805-100.]

WAC 173-806-125 Additional elements to be covered in an EIS. *(This entire section is optional. If used, you may select any of the listed elements or add your own.)* The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this ordinance:

- (1) Economy.
- (2) Social policy analysis.
- (3) Cost-benefit analysis.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-125, filed 6/15/84. Formerly WAC 173-805-105.]

PART FIVE COMMENTING

WAC 173-806-128 Adoption by reference. This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city/county adopts the following sections by reference, as supplemented in this part:

| WAC | |
|------------|---|
| 197-11-500 | Purpose of this part. |
| 197-11-502 | Inviting comment. |
| 197-11-504 | Availability and cost of environmental documents. |
| 197-11-508 | SEPA register. |
| 197-11-510 | Public notice. |
| 197-11-535 | Public hearings and meetings. |
| 197-11-545 | Effect of no comment. |
| 197-11-550 | Specificity of comments. |
| 197-11-560 | FEIS response to comments. |
| 197-11-570 | Consulted agency costs to assist lead agency. |

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-128, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-128, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-130 Public notice. *(This section is required for non-GMA cities and*

counties. Subsections (1) and (2) of this section may be combined.) (1) Whenever. . . . city/county issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city/county shall give public notice as follows:

(a) If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

(b) If no public notice is required for the permit or approval, the city/county shall give notice of the DNS or DS by: *(Note: Select at least one of the following)*

(i) Posting the property, for site-specific proposals;

(ii) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(iii) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or

(vi) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas);

(vii) *(or, specify other method)*.

(c) Whenever the city/county issues a DS under WAC 197-11-360(3), the city/county shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(2) Whenever the city/county issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(a) Indicating the availability of the DEIS in any public notice required for a nonexempt license; and *(Note: In addition select at least one of the following or insert all of the list and require that at least one method be used.)*

(b) Posting the property, for site-specific proposals;

(c) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(d) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(e) Notifying the news media;

(f) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or

(g) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposals or subject areas); *(and/or*

(h) specify other).

(3) Whenever possible, the city/county shall integrate the public notice required under this section with existing notice procedures for the city's/county's nonexempt permit(s) or approval(s) required for the proposal.

(4) The city/county may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-130, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-130, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-132 Public notice. *(This section is required for GMA cities and counties. Subsections (1) and (2) of this section may be combined.)* (1) Whenever possible, the city/county shall integrate the public notice required under this section with existing notice procedures for the city's/county's nonexempt permit(s) or approval(s) required for the proposal.

(2) Whenever..... city/county issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city/county shall give public notice as follows:

(a) If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

(b) If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

(c) If no public notice is otherwise required for the permit or approval, the city/county shall give notice of the DNS or DS by: *(Note: Select at least one of the following.)*

- (i) Posting the property, for site-specific proposals;
- (ii) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
- (iii) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- (iv) Notifying the news media;
- (v) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or
- (vi) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas);
- (vii) (or, specify other method).....

(d) Whenever the city/county issues a DS under WAC 197-11-360(3), the city/county shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(3) If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510 (1)(b).

(4) Whenever the city/county issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(a) Indicating the availability of the DEIS in any public notice required for a nonexempt license; and (Note: In addition select at least one of the following or insert all of the list and require that at least one method be used.)

- (b) Posting the property, for site-specific proposals;
- (c) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
- (d) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
- (e) Notifying the news media;
- (f) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or
- (g) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposals or subject areas);
- (h) (and/or specify other).....

(5) Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).

(6) The city/county may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-132, filed 11/10/98, effective 12/11/98.]

WAC 173-806-140 Designation of official to perform consulted agency responsibilities for the city/county. (1) The (*position title, department, or office*) shall be responsible for preparation of written comments for the city/county in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(2) This (*person, department or office*) shall be responsible for the city's/county's compliance

with WAC 197-11-550 whenever the city/county is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city/county.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-140, filed 6/15/84. Formerly WAC 173-805-110.]

PART SIX USING EXISTING ENVIRONMENTAL DOCUMENTS

WAC 173-806-150 Purpose of this part and adoption by reference. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's/county's own environmental compliance. The city/county adopts the following sections by reference:

WAC

- 197-11-164 Planned actions--Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions--Procedures for adoption.
- 197-11-172 Planned actions--Project review.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement--Procedures.
- 197-11-625 Addenda--Procedures.
- 197-11-630 Adoption--Procedures.
- 197-11-635 Incorporation by reference--Procedures.
- 197-11-640 Combining documents.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-150, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-150, filed 6/15/84. Formerly WAC 173-805-020.]

PART SEVEN SEPA AND AGENCY DECISIONS

WAC 173-806-155 Purpose of this part and adoption by reference. This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city/county adopts the following sections by reference:

WAC

- | | |
|------------|---------------------------------------|
| 197-11-650 | Purpose of this part. |
| 197-11-655 | Implementation. |
| 197-11-660 | Substantive authority and mitigation. |
| 197-11-680 | Appeals. |

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-155, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-160 Substantive authority. (1) The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the city of. . . . / county.

(2) The (city/county) may attach conditions to a permit or approval for a proposal so long as:

(a) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and

(b) Such conditions are in writing; and

(c) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

(d) The city/county has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(e) Such conditions are based on one or more policies in subsection (4) of this section and cited in the license or other decision document.

(3) The (city/county) may deny a permit or approval for a proposal on the basis of SEPA so long as:

(a) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this ordinance; and

(b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

(c) The denial is based on one or more policies identified in subsection (4) of this section and identified in writing in the decision document.

(4) The city/county designates and adopts by reference the following policies as the basis for the city's/county's exercise of authority pursuant to this section:

(a) The city/county shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The city/county recognizes that each person has a fundamental and inalienable right to a

healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(c) *(Optional.)* The city/county adopts by reference the policies in the following city/county *(codes, ordinances, resolutions, plans)*. *(List the codes, ordinances, resolutions, or plans you have selected, such as zoning ordinance, building codes or comprehensive plans.)*.

(d) *(Optional.)* The city/county establishes the following additional policies:

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-160, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-160, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-170 Appeals. (1) *(Agency administrative appeal is optional. If allowed, the statute requires that all of this subsection be included, except (c) of this subsection which is optional.). . . . city/county establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:*

(Note: No model ordinance language has been prepared for administrative appeals, as there are many different choices a city or county can make. If you choose to offer administrative appeals, state your procedures here. Special note: If you do not wish to offer one specific type of administrative appeal, that of a nonelected official's decision conditioning or denying a proposal, RCW 43.21C.060 requires you to clearly state that you are eliminating that type of appeal.)

(b) For any appeal under this subsection, the city/county shall provide for a record that shall consist of the following:

- (i) Findings and conclusions;
- (ii) Testimony under oath; and
- (iii) A taped or written transcript.

(c) *(Optional.)* The city/county may require the appellant to provide an electronic transcript.

(d) The procedural determination by the city's/county's responsible official shall carry substantial weight in any appeal proceeding.

(2) The city/county shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. *(The following is optional.)* The following permits or approvals require official notice:. . . .

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-170, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-170, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-173 Notice/statute of limitations. *(Optional.)* (1) The city/county, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk or county auditor, applicant or proponent pursuant to RCW 43.21C.080.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-173, filed 6/15/84. Formerly WAC 173-805-135.]

PART EIGHT DEFINITIONS

WAC 173-806-175 Purpose of this part and adoption by reference. This part contains

uniform usage and definitions of terms under SEPA. The city/county adopts the following sections by reference, as supplemented by WAC 173-806-030:

WAC

| | |
|------------|---|
| 197-11-700 | Definitions. |
| 197-11-702 | Act. |
| 197-11-704 | Action. |
| 197-11-706 | Addendum. |
| 197-11-708 | Adoption. |
| 197-11-710 | Affected tribe. |
| 197-11-712 | Affecting. |
| 197-11-714 | Agency. |
| 197-11-716 | Applicant. |
| 197-11-718 | Built environment. |
| 197-11-720 | Categorical exemption. |
| 197-11-721 | Closed record appeal. |
| 197-11-722 | Consolidated appeal. |
| 197-11-724 | Consulted agency. |
| 197-11-726 | Cost-benefit analysis. |
| 197-11-728 | County/city. |
| 197-11-730 | Decision maker. |
| 197-11-732 | Department. |
| 197-11-734 | Determination of nonsignificance (DNS). |
| 197-11-736 | Determination of significance (DS). |
| 197-11-738 | EIS. |
| 197-11-740 | Environment. |
| 197-11-742 | Environmental checklist. |
| 197-11-744 | Environmental document. |
| 197-11-746 | Environmental review. |
| 197-11-750 | Expanded scoping. |
| 197-11-752 | Impacts. |
| 197-11-754 | Incorporation by reference. |
| 197-11-756 | Lands covered by water. |
| 197-11-758 | Lead agency. |
| 197-11-760 | License. |
| 197-11-762 | Local agency. |
| 197-11-764 | Major action. |
| 197-11-766 | Mitigated DNS. |
| 197-11-768 | Mitigation. |

WAC

| | |
|------------|---------------------------------|
| 197-11-770 | Natural environment. |
| 197-11-772 | NEPA. |
| 197-11-774 | Nonproject. |
| 197-11-775 | Open record hearing. |
| 197-11-776 | Phased review. |
| 197-11-778 | Preparation. |
| 197-11-780 | Private project. |
| 197-11-782 | Probable. |
| 197-11-784 | Proposal. |
| 197-11-786 | Reasonable alternative. |
| 197-11-788 | Responsible official. |
| 197-11-790 | SEPA. |
| 197-11-792 | Scope. |
| 197-11-793 | Scoping. |
| 197-11-794 | Significant. |
| 197-11-796 | State agency. |
| 197-11-797 | Threshold determination. |
| 197-11-799 | Underlying governmental action. |

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-175, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-175, filed 6/15/84. Formerly WAC 173-805-020.]

PART NINE
CATEGORICAL EXEMPTIONS

WAC 173-806-180 Adoption by reference. The city/county adopts by reference the following rules for categorical exemptions, as supplemented in this ordinance, including WAC 173-806-070 (Flexible thresholds), WAC 173-806-080 (Use of exemptions), and WAC 173-806-190 (Critical areas):

WAC

| | |
|------------|---------------------------------------|
| 197-11-800 | Categorical exemptions. |
| 197-11-880 | Emergencies. |
| 197-11-890 | Petitioning DOE to change exemptions. |

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-180, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-180, filed 6/15/84. Formerly

**PART TEN
AGENCY COMPLIANCE**

WAC 173-806-185 Purpose of this part and adoption by reference. This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city/county adopts the following sections by reference:

WAC

- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-185, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-185, filed 6/15/84. Formerly WAC 173-805-020.]

WAC 173-806-190 Critical areas. *(Optional.)* (1) The city/county has selected certain categorical exemptions that will not apply in one or more critical areas identified in the critical areas ordinances required under RCW 36.70A.060. For each critical area listed below, the exemptions within WAC 197-11-800 that are inapplicable for that area are:

(a)....(list each critical area and exemptions that do not apply within that critical area; exemptions that do not apply can be chosen from the list in WAC 197-11-908)....

(b)....

(2) The scope of environmental review of actions within these areas shall be limited to:

(a) Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and

(b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws.

(3) All categorical exemptions not listed in subsection (1) of this section apply whether or not the proposal will be located in a critical area.

[Statutory Authority: RCW 43.21C.130. 98-23-038 (Order 95-16 Phase 2), § 173-806-190, filed 11/10/98, effective 12/11/98; 84-13-036 (Order DE 84-25), § 173-806-190, filed 6/15/84. Formerly WAC 173-805-050.]

WAC 173-806-200 Fees. *(This entire section is optional. You may use any or none of subsections (1), (2) or (4) of this section but you must use subsection (3) of this section if other subsections are used.)* The city/county shall require the following fees for its activities in accordance with the provisions of this ordinance:

(1) Threshold determination. For every environmental checklist the city/county will review when it is lead agency, the city/county shall collect a fee of *(\$50.00 or enter a different amount)* from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this ordinance for making a threshold determination shall not begin to run until payment of the fee. *(Note: The following option may be added: When the city/county completes the environmental checklist at the applicant's request or under WAC 173-806-090(3) of this ordinance, an additional shall be collected.)*

(2) Environmental impact statement.

(a) When the city/county is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city/county, the city/county may charge and collect a reasonable fee from any applicant to cover costs incurred by the city/county in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(b) The responsible official may determine that the city/county will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city/county and may bill such costs and expenses directly to the applicant. The city/county may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city/county and applicant after a call for proposals.

(c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.

(3) The city/county may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this ordinance relating to the applicant's proposal.

(4) The city/county shall not collect a fee for performing its duties as a consulted agency.

(5) The city/county may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.17 RCW.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-200, filed 6/15/84.

Formerly WAC 173-805-130.]

WAC 173-806-205 Effective date. (Optional.) The effective date of this ordinance is

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-205, filed 6/15/84. Formerly chapter 173-805 WAC.]

WAC 173-806-220 Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-220, filed 6/15/84. Formerly WAC 173-805-140.]

PART ELEVEN FORMS

WAC 173-806-230 Adoption by reference. The city/county adopts the following forms and sections by reference:

| WAC | |
|------------|--|
| 197-11-960 | Environmental checklist. |
| 197-11-965 | Adoption notice. |
| 197-11-970 | Determination of nonsignificance (DNS). |
| 197-11-980 | Determination of significance and scoping notice (DS). |
| 197-11-985 | Notice of assumption of lead agency status. |
| 197-11-990 | Notice of action. |

[Statutory Authority: RCW 43.21C.130. 84-13-036 (Order DE 84-25), § 173-806-230, filed 6/15/84. Formerly WAC 173-805-020.]